

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

LAIRON GRAHAM,

21-CR-195-LJV-MJR
DECISION & ORDER

Defendant.

On August 25, 2021, United States Magistrate Judge Michael J. Roemer signed a criminal complaint charging the defendant, Lairon Graham, with one count of possessing cocaine base with intent to distribute it and one count of being a felon in possession of ammunition. Docket Item 1. On November 30, 2021, a grand jury in the Western District of New York returned an indictment charging Graham with narcotics conspiracy (Count 1), possession with intent to distribute fentanyl (Count 2), possession with intent to distribute cocaine (Count 3), using and maintaining a drug-involved premises (Count 4), and being a felon in possession of ammunition (Count 5). Docket Item 9. On November 30, 2021, this Court referred this case to Judge Roemer for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 11.

On January 4, 2022, Graham moved to dismiss Counts 2, 3, and 5 of the indictment under the Speedy Trial Act, Docket Item 19; on January 18, 2022, the government responded, Docket Items 20 and 21; and on January 26, 2022, Graham replied, Docket Item 24.

On May 2, 2022, Judge Roemer issued a Report and Recommendation (“R&R”) finding that Graham’s motion should be granted in part and denied in part. Docket Item

64. More specifically, Judge Roemer recommended that this Court dismiss Counts 3 and 5 of the indictment without prejudice and deny the remainder of Graham's motion.

Id. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Criminal Procedure 59 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See Fed.R.Crim.P. 59(b)(3) (stating only that “[t]he district judge must consider *de novo any objection* to the magistrate judge's recommendation” (emphasis added)); *Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed.”).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer's R&R as well as the parties' submissions to him. Based on this Court's review and the absence of any objections, the Court accepts and adopts Judge Roemer's recommendation to dismiss Counts 3 and 5 of the indictment without prejudice and to deny the remainder of the motion.¹

¹ Following Judge Roemer's R&R, Graham was arraigned on a superseding indictment. Docket Item 70. This Court held a status conference with the parties on July 20, 2022. Docket Item 111. Based on the discussion with counsel at that conference, this Court opted simply to accept the R&R as is, rather than opine about whether the superseding indictment rendered it moot.

For the reasons stated above and in the R&R, Graham's motion to dismiss the indictment, Docket Item 19, is GRANTED IN PART and DENIED IN PART. Counts 3 and 5 of the indictment are hereby DISMISSED without prejudice and Graham's motion is otherwise denied. The case is referred back to Judge Roemer for further proceedings consistent with the referral order of May 10, 2022, Docket Item 72.

SO ORDERED.

Dated: July 21, 2022
Buffalo, New York

/s/ Lawrence J. Vilardo

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE